

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ANTONIO R. DAVALOS
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-398
Case No. 77-8980

S.S.A. No.

UNIVERSAL REFUSE REMOVAL
(Employer)

Employer Account No.

Office of Appeals No. ONT-14145

The claimant appealed from that portion of the decision of the administrative law judge which held that the claimant was not entitled to unemployment insurance benefits under section 1253(c) of the code.

STATEMENT OF FACTS

The claimant last worked for the above-named employer as a refuse collector for approximately three years and two months earning \$4.40 an hour. On September 3, 1977 he was involved in an automobile accident and suffered a strained back and shoulders.

He consulted a doctor who advised him to rest for a couple of days and provided him with a return to work permit dated September 6, 1977. That permit contained a statement that the claimant was disabled from "9/6/77 through 9/8/77" and could return to work with no restrictions after being off work for two days. The claimant was nevertheless unable to return to his regular job on September 9, 1977. He contended that he was unable to continue to lift 60 to 70-pound refuse cans and his employer was unable to provide him with lighter work.

The claimant did not return to work and he filed a claim for unemployment compensation benefits effective September 11, 1977. The Department issued a determination on September 30, 1977 which disqualified the claimant for benefits under section 1256 of the code on the ground he voluntarily left his most recent work without good cause. A ruling relieved the employer's account of charges. The claimant filed an appeal of that adverse determination on October 6, 1977 and stated as the grounds for that appeal that he was entitled to benefits "Because I am without work for a month as I could not go seek work." (Underlining added)

On October 10, 1977 the claimant consulted a second doctor. Thereafter, he filed a claim for disability benefits. On October 18, 1977, he signed a Claim Statement of Employee on which he certified that the first day he was too sick to work was September 4, 1977 and that he had not recovered from his disability. The claimant's doctor had certified on October 17, 1977 that he had attended the claimant from October 10, 1977; that his disability commenced on September 4, 1977; and that he estimated the claimant's disability should end on November 17, 1977. The claimant has received disability benefits beginning October 10, 1977 and continuing through the date of the hearing.

The Department issued a subsequent determination on October 24, 1977 which held the claimant was ineligible for benefits under section 1253(c) of the code beginning September 11, 1977 and continuing until the disqualifying conditions no longer exist on the ground he was not able to work because of the injuries suffered in an auto accident. Before the time limit within which to appeal that determination had expired, the local office of appeals scheduled a hearing to be held on November 16, 1977. A notice of hearing was mailed to the claimant on October 31, 1977 which informed him that the issues to be heard at the hearing included not only his disqualification under section 1256 of the code but also his eligibility for benefits under section 1253(c) of the code.

A hearing was held on November 16, 1977 and the administrative law judge issued his decision on November 17, 1977 holding the claimant was not disqualified for benefits under section 1256 of the code and that the employer's account was subject to charges. The Department's determination that the claimant was ineligible for benefits under section 1253(c) of the code was affirmed. No

appeal has been taken from that portion of the administrative law judge's decision holding the claimant was not disqualified for benefits under section 1256 of the code and that the employer's account was subject to charges.

Although he appealed his disqualification for benefits under section 1256 of the code on the ground he was unable to seek work, the claimant contended at the hearing he had looked for other jobs but had only three or four job interviews. The claimant asserts he is eligible for unemployment insurance benefits from September 11, 1977 to the time he became entitled to the payment of disability benefits beginning October 10, 1977.

REASONS FOR DECISION

Section 1253(c) of the Unemployment Insurance Code provides that a claimant is eligible to receive benefits with respect to any week only if "he was able to work and available for work for that week."

Section 2625 of the Unemployment Insurance Code provides that unemployment compensation disability benefits are payable to individuals eligible to receive such benefits.

Section 2626 of the Unemployment Insurance Code provides that an individual shall be deemed disabled in any day in which, because of his physical or mental condition, he is unable to perform his regular or customary work.

Section 2628 of the code provides that an individual is not eligible for disability benefits for any period for which he has received or is entitled to receive unemployment benefits.

The provisions for the payment of disability benefits and unemployment insurance benefits are mutually exclusive. In Appeals Board Decision No. P-B-369 the Board stated:

" . . . Both forms of benefits are part of a comprehensive, integrated program of social insurance which, together with workers' compensation, are designed to alleviate the

burden of a loss of wages by a particular employee during a particular period of time. They are interrelated by the common principle of permitting only a single recovery of benefits at one time (California Compensation Insurance Company v. Industrial Accident Commission (1954), 128 Cal. App. 2d 797, 276 P. 2d 148)."

Therefore, if the claimant has been continuously disabled since his accident on September 3, 1977 and could have successfully applied for disability benefits after that date, he is not eligible for unemployment insurance benefits under section 1253(c) for any period in which he was disabled and unable to work.

The claimant certified on October 18, 1977 that he had been continuously disabled since September 4, 1977. The claimant's doctor certified that the claimant was disabled and in his opinion incapable of performing his regular work from September 4, 1977 through an estimated date of November 11, 1977. Notwithstanding the fact the claimant obtained a return to work permit from another doctor who indicated the claimant was able to return to work on September 9, 1977 with no restrictions, the claimant was unable to do so.

The claimant filed a claim for unemployment benefits rather than disability benefits and was initially determined to be disqualified for such benefits by the Department. He applied for disability benefits and began receiving disability benefits October 10, 1977. Thereafter, the Department held him ineligible for unemployment benefits under section 1253(c) of the code because they determined he was unable to work after September 11, 1977.

The claimant has received disability benefits based on his statements and his doctor's certification that he has been continuously disabled since September 4, 1977. The administrative law judge has found the claimant was continuously disabled after his accident on September 3 and unable to work thereafter through the date of the hearing. That finding is not against the weight of the evidence and should therefore be approved (Appeals Board Decision No. P-B-10).

We do not believe that the claimant can represent on the one hand he has been continuously disabled since September 4, 1977 for the purpose of filing a disability claim and on the other hand contend he is entitled to unemployment benefits for a portion of that same period during the interval from the onset of that disability until the time he actually started receiving disability benefits. We conclude there is sufficient evidence to sustain a finding that the claimant was continuously disabled after September 3 and that he is not eligible for unemployment benefits under section 1253(c) of the code.

Since the unemployment insurance and the unemployment compensation disability programs are interrelated, we are of the opinion that, where it appears that the claimant might be entitled to benefits under any provision of the Unemployment Insurance Code but the question is which program should pay the benefits, the claimant's eligibility for both types of benefits should be considered. Thus, if it is held that he is not entitled to one, he may be able to receive the other. Where the department is put upon notice that a claimant may have misjudged the type of claim he should file, there appears to be no reason why the department should not withhold its determination on the first claim until the other kind of claim is filed and evaluated so that proper determinations may be based upon full consideration of all factors that will affect the claimant's entitlement to appropriate benefits.

Therefore, this claimant's efforts to secure appropriate benefits under the Unemployment Insurance Code should be considered as one transaction. Since we have concluded that the claimant is ineligible for unemployment benefits under section 1253(c) because he has been unable to work after September 3, 1977, his eligibility for disability benefits should be considered.

The claimant has been receiving disability benefits beginning October 10, 1977. However, there is insufficient evidence to determine if the claimant had good cause to backdate his disability claim to any period prior to October 3, 1977, the effective date of his claim considering the seven-day waiting period required by section 2627. Therefore, that matter is referred to the Department to investigate and determine whether the claimant has good cause to backdate his claim for disability benefits to any period of time after September 3, 1977 to October 3, 1977 and to issue a determination accordingly.

DECISION

The appealed portion of the decision of the administrative law judge is affirmed. The claimant is not eligible for benefits under section 1253(c) of the code as provided in the appealed decision. The matter of whether or not the claimant has good cause to backdate his claim for disability benefits to any period of time after September 3, 1977 to October 3, 1977 is referred to the Department to issue a determination from which the claimant has a right to appeal if adverse to his interests.

Sacramento, California, August 10, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

RICHARD H. MARRIOTT

HERBERT RHODES

SEPARATE OPINION -

Written Opinion Attached

HARRY K. GRAFE

SEPARATE OPINION

I concur in the result reached by my colleagues in this case and I join them in their decision, except for the second full paragraph on page 5. With the language in that paragraph I cannot agree.

True, the unemployment insurance and unemployment compensation disability programs are interrelated, in that each is a form of social insurance to protect the unemployed. Although interrelated, the two programs are not, however, interwoven or intertwined. The Legislature has expressly so provided. In enacting the Unemployment Insurance Code, the Legislature specifically demarcated the unemployment insurance program as being separate and apart from the unemployment compensation disability program. Moreover, the unemployment insurance program has its genesis in Federal law, and State statutory provisions must conform to the terms of the Federal Social Security Act (Title III (commencing with § 501), Chapter 7, Title 42, U.S. Code), whereas disability insurance is solely a creation of the Legislature and there are no Federal program mandates which must be followed.

Within the limits established by the Federal Social Security Act, the Legislature has the authority to amend the Unemployment Insurance Code to interweave or intertwine the unemployment insurance and unemployment compensation disability programs. Such power and authority resides in the Legislature, however, and not in this Board. Hence, under the existing statutory scheme governing the unemployment insurance and unemployment compensation disability programs, this Board lacks the authority to direct, require, or advise the Department to withhold its determination on an unemployment insurance claim pending the filing and review of a disability insurance claim, or vice versa. If the Legislature, in its infinite wisdom, decides that such an integration of programs is warranted (and assuming that the so-called "prompt-payment" provisions of the Social Security Act relating to unemployment insurance benefits would not be in conflict therewith), it is the Legislature and only the Legislature which possesses the power under our State Constitution to so ordain. Thus, irrespective of our desires, the directions to the Department set forth in said paragraph are in excess of this Board's authority.

HARRY K. GRAFE